

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

January 25, 2000

**IN RE:**

**APPLICATION FOR APPROVAL OF THE TRANSFER**  
**OF THE LONG DISTANCE CUSTOMER OF USTEL, INC.**  
**AND ARCADA COMMUNICATIONS, INC.**  
**TO ONESTAR LONG DISTANCE, INC.**

)  
)  
)  
)  
)  
)

**DOCKET NO. 99-00550**

---

**ORDER APPROVING THE PURCHASE OF ASSETS  
AND THE TRANSFER OF LONG DISTANCE CUSTOMER BASE**

---

This matter came before the Tennessee Regulatory Authority ("Authority") on the Application of OneStar Long Distance, Inc. ("OneStar"), for approval of an asset purchase and assignment of customer base pursuant to Tenn. Code Ann. § 65-4-112. The Directors of the Authority considered this matter at a regularly scheduled Authority Conference held on September 28, 1999.

From the Application and the record existing in this matter, the Authority has determined the following:

1. OneStar is a privately held Indiana corporation headquartered in Evansville, Indiana. OneStar is a nationwide provider of telecommunications services and is authorized to provide resold long distance services in over forty-five (45) states by virtue of certification, registration, tariff requirements, or on a deregulated basis. In Tennessee, OneStar is authorized to provide intrastate long distance telecommunications services pursuant to certification granted by the Authority in Docket No. 96-01349, on February 24, 1997.

**FILE**  
TRADD

2. UStel, Inc. is a Minnesota corporation headquartered with its wholly owned subsidiary, Arcada Communications, Inc., (“Arcada”) in Seattle, Washington. UStel received its certification to provide service in Tennessee from the Tennessee Public Service Commission on February 8, 1996 in Docket No. 96-00045. UStel recently filed for protection under Chapter 11 of the United States Bankruptcy Code subject to approval of the United States Bankruptcy Court for the Western District of Washington (“Bankruptcy Court”). (Bankruptcy No. 99-02633).

3. UStel, pursuant to Chapter 11 of the Bankruptcy Code, moved the Bankruptcy Court to approve the Asset Purchase Agreement (“Agreement”) it entered into with OneStar on July 7, 1999. The Agreement contemplates the purchase of the long distance customer base of UStel and Arcada by OneStar. On July 14, 1999, the Bankruptcy Court approved the motion of UStel and Arcada to sell substantially all of the assets of both companies to OneStar with the exception of those assets specifically excluded by the Agreement. (A copy of the Bankruptcy Court’s Order of July 14, 1999, is attached hereto as **Attachment A**).

#### **I. CRITERIA FOR APPROVING CONSOLIDATION OF PROPERTY**

A consolidation of property, rights and franchises between regulated public utilities (which includes the transfer of customer base and other assets) is not valid until approved by the Authority under the provisions of Tenn. Code Ann. § 65-4-112. In addition, under Tenn. Code Ann. § 65-4-101, any entity that owns, operates, manages or controls utility systems, plant or equipment under certification by this Authority, or its predecessor, the Tennessee Public Service Commission, for the purpose of providing utility service in the state of Tennessee is a public utility. Since this merger involves two entities holding certificates in Tennessee, Authority approval is required under the provisions of Tenn. Code Ann. § 65-4-112(a). This Section provides for the following:

(a) **No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority,** even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state. (Emphasis supplied).

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After consideration of the entire record in this matter, including the Application, the Directors find and conclude as follows:

1. That OneStar is and has been engaged in the business of providing telecommunications services in Tennessee;
2. That UStel has been engaged in the business of providing telecommunications services in Tennessee;
3. That the Authority has jurisdiction over the subject matter of said application pursuant to Tenn. Code. Ann. § 65-4-112;
4. That on July 14, 1999, the United States Bankruptcy Court for the Western District of Washington approved UStel and Arcada's motion authorizing the sale of substantially all of the assets of both companies to OneStar with the exception of those assets specifically excluded by the Asset Purchase Agreement;
5. According to the Application, the transfer will result in no change in the rates, terms or conditions of the service that the customers of both companies enjoy. As such, the transfer of the long distance customer base of both companies should be transparent in the terms of the services these customers receive;
6. According to the Application, the transaction will serve the public interest because it will promote competition among providers of long distance telecommunications

services by combining the financial resources and managerial skills and experience of OneStar with the customer base of both companies;

7. According to the Application, UStel and its wholly owned subsidiary Arcada will no longer provide long distance telecommunications services as a result of the transfer; and

8. That based upon the foregoing, the sale and subsequent transfer of UStel and Arcada's customer base and other related assets (as set forth in the Agreement) to OneStar is compatible with the public interest.

**IT IS THEREFORE ORDERED THAT:**

1. The Application of OneStar Long Distance, Inc. for approval of an asset purchase and assignment of customer base pursuant to Tenn. Code Ann. § 65-4-112 is granted;

2. As a result of the transfer substantially all of the assets of UStel, Inc. and Arcada Communications, Inc. to OneStar Long Distance, Inc., UStel, Inc. is no longer authorized to provide operator services and resold interexchange telecommunications services in Tennessee as previously authorized in Docket No. 96-00045; and

3. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order

  
Melvin J. Malone, Chairman

  
H. Lynn Greer, Director

ATTEST:

  
K. David Waddell, Executive Secretary

  
Sara Kyle, Director

HONORABLE KAREN A. OVERSTREET

**FILED**  
Western District of Washington  
at Seattle

JUL 14 1999

U.S. Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

USTEL, INC.; and ARCADEA COMMUNICATIONS,  
INC.,

Debtors.

No. 99-02632

99-02633 (Ch. 11s)

(Administratively Consolidated Under No.  
99-02632)ORDER GRANTING DEBTORS'  
MOTION FOR SALE OF  
SUBSTANTIALLY ALL OF THE  
DEBTORS' NON-PACIFIC CELLULAR  
ASSETS FREE AND CLEAR OF ALL  
CLAIMS AND ENCUMBRANCES AND  
APPROVING ASSUMPTION AND  
ASSIGNMENT OF CONTRACTS AND  
LEASES

THIS MATTER came before the Court on the 13<sup>th</sup> day of July 1999 on the motion of UStel, Inc. and Arcada, Inc., Debtors-in-Possession herein ("Debtors") for an Order (1) authorizing sale of substantially all of their Non-Pacific Cellular Assets<sup>1</sup> ("the "Assets") free and clear of liens, claims, and encumbrances pursuant to Bankruptcy Code § 363 to OneStar Long Distance, Inc. ("OneStar")

<sup>1</sup> Non-Pacific Cellular assets are those assets more specifically set forth in the Asset Purchase and Sale Agreement dated July 7, 1999 between and among Debtors and OneStar Long Distance, Inc. ("Asset Purchase Agreement") and the Motion.

1 and 2) authorizing assumption and assignment of certain executory contracts and leases (Motion").  
2 Notice of the Motion was given to all parties listed in the Case Management Order entered by the  
3 Court on March 15, 1999 and in accordance with this Court's Order Regarding Notice and Hearing of  
4 Sales Motions entered on July 7, 1999. Upon considering: (i) the Motion and the Declaration of  
5 David Otto (the "Otto Declaration") and the Declaration of John H. Bonde (the "Bonde Declaration"),  
6 (ii) the record in this chapter 11 case; (iii) all objections, including those filed on or about May 13,  
7 1999, to the initial proposed sale to Rocky Mountain Internet, Inc. ("RMI"), (iv) the arguments of  
8 counsel and the evidence admitted at the hearing, this Court HEREBY FINDS AND DETERMINES  
9 THAT:

10 FINDS AND DETERMINES THAT:

11 A. The Court has jurisdiction to hear and determine the Motion and all related matters  
12 pursuant to 28 U.S.C. §§ 1334 and 157 and the "Standing Order of Referral of Cases to Bankruptcy  
13 Judges" of the United States District Court for the Western District of Washington. Venue of this  
14 proceeding in this district is proper pursuant to 28 U.S.C. § 1409. The Motion is a core proceeding  
15 pursuant to 28 U.S.C. § 157(b)(2)(A),(B),(N) and (O). The statutory predicates for the relief granted  
16 herein are sections 105, 363 and 365 of the Bankruptcy Code, as complemented by Bankruptcy Rules  
17 2002, 6004, 6006 and 9007.

18 B. Notice of the hearing on the Motion, and the Motion was timely and properly given in  
19 compliance with the Bankruptcy Code and Rules and the Case Management Order and other Orders  
20 entered in this case and was reasonable and appropriate under the circumstances.

21 C. The Debtors have demonstrated that the sale of the Assets to OneStar pursuant to the  
22 Asset Purchase Agreement is based on sound business justifications, and such sale is in the best  
23

1 interests of the Debtors' estate, for the reasons set forth in the Motion, and the Otto and Bonde  
2 Declarations. Failure to approve the Motion will cause irreparable damage to the Debtors and their  
3 estate.

4 D. The sale of the Assets and the assignment of the Included Agreements pursuant to the  
5 Asset Purchase Agreement have been proposed and, if consummated, will have been consummated in  
6 good faith in accordance with section 363(m) of the Bankruptcy Code. OneStar is entitled to the  
7 protections afforded under section 363(m) of the Bankruptcy Code.

8 E. OneStar is not an insider or an affiliate of the Debtors.

9 F. The Debtors have demonstrated the sufficient justification to sell a substantial portion  
10 of their assets other than under a plan of reorganization and pursuant to a disclosure statement.

11 G. The consideration to be received by the Debtors from OneStar is fair and reasonable.

12 H. The Debtors have demonstrated that the assumption and assignment of the Included  
13 Agreements<sup>2</sup> to OneStar is based upon sound business justifications as set forth in the Motion and the  
14 Otto and Bonde Declarations.

15 I. OneStar, as contemplated by the Asset Purchase Agreement will cure, at or before  
16 closing of the sale to OneStar, the existing defaults on the Included Agreements as follows: (i) lease  
17 of Seattle switch from Telecommunications Finance Group/Siemans Information Corp - \$45,711.93;  
18 (ii) lease of billing system from Data General Corp. - \$13,397.83; (iii) license agreement with EXL  
19 Information Corp. for billing system - \$18,668.79; (iv) lease of co-location space with Melvin Mark in  
20 Portland Oregon - \$1,759.29; (v) lease with Clise Properties, Inc. of office space in United Airlines  
21  
22

23 <sup>2</sup> Capitalized terms used and not defined herein have the meanings set forth in the Asset Purchase Agreement and are incorporated herein by this reference.

1 Building in Seattle, Washington - \$32,750.53; (vi) billing and collection contract with Integretel  
2 Incorporated - \$0.

3 J. OneStar has provided the requisite adequate assurance of its future performance under  
4 the Included Agreements necessary for the Debtors' assignment of the Included Agreement to  
5 OneStar.

6 K. Consummation of the Asset Purchase Agreement is in the best interests of the Debtors,  
7 their estate, all creditors, equity security holders and other parties in interest.

8 Based upon the foregoing, and good cause appearing, **IT IS HEREBY ORDERED,**  
9 **ADJUDGED AND DECREED:**

10  
11 1. The Motion is hereby granted.

12 2. The oppositions to the Motion are overruled.

13 3. The Asset Purchase Agreement between OneStar and the Debtors is approved  
14 and a copy is attached hereto as Exhibit "A," subject to any required approval (pursuant to federal law  
15 and regulation) of any contemplated sale or transfer of licenses, authorizations, or registrations issued  
16 by the Federal Communications Commission.

17 4. Except as otherwise set forth by this Order, the sale of the Assets and  
18 assignment of the Included Agreements to OneStar pursuant to the Asset Purchase Agreement is free  
19 and clear of all claims, liens and encumbrances of any nature, kind or description other than the  
20 performance obligations under the Included Agreements.

21 5. The Asset Purchase Agreement: (i) was proposed, negotiated, and entered into  
22 in good faith after arms-length bargaining by the parties; and (ii) provides the Debtors with the highest  
23



1 or otherwise best offer received for the Assets. OneStar is a good faith purchaser pursuant to section  
2 363(m) of the Bankruptcy Code and entitled to the protections thereunder.

3 6. The Debtors are authorized to assume and assign the Included Agreements to  
4 OneStar as of the Closing. The assignments of the Included Agreements shall be effective  
5 notwithstanding any provisions precluding or impairing the rights of the Debtors to assign the  
6 Included Agreements.

7 7. OneStar shall pay Data General Corporation, EXL Information Corp., Clise  
8 Properties, Inc., Melvin Mark Companies, and Telecommunications Finance Group/Siemans  
9 Information Corp, and Integretel Incorporated the obligations set forth above in paragraph 1 as "cure"  
10 of defaults under the contract and or lease between such parties and the Debtors. Upon payment to  
11 these specified parties, they are forever barred from asserting claims against the Debtors arising under  
12 or related to the Included Agreements. *WTD*

13 *upon payment pursuant to paragraph 7, above,*  
14 8. *A* The non-debtor parties to the Included Agreements are forever barred from  
15 asserting claims against the Debtors arising under or related to the Included Agreements and each of  
16 the Included Agreements shall be deemed in full force and effect on its assignment to OneStar.

17 9. All parties to the Included Agreements are forever barred and enjoined from  
18 raising or asserting against the Debtors or OneStar any default or breach under, or any claim or  
19 pecuniary loss, or condition to assignment, arising under or related to, the Included Agreements  
20 existing as of the Closing or arising by reason of the Closing unless such default, breach, claim,  
21 pecuniary loss or condition was timely raised or asserted prior to the deadline therefor set by the  
22 Court.  
23

10. The Debtors are authorized to take such further actions as may be necessary to implement, close and consummate the sale of the Assets, including the execution of any documents necessary to consummate such sale and to assume and assign the Included Agreements to OneStar pursuant to the terms and conditions of the Asset Purchase Agreement and without further order of this Court.

11. Except as expressly provided in the Asset Purchase Agreement, OneStar has not assumed or otherwise become obligated for any of the Debtors' liabilities. Consequently, after closing of the sale to OneStar, all creditors of the Debtors, whether known or unknown, are hereby enjoined from asserting or prosecuting any claim or cause of action against OneStar or the Assets to recover on account of any liability owed by the Debtors.

12. The sales proceeds received from the sale of the Assets shall be used and distributed at closing as follows:

a. Up to \$100,000 may be used to pay any sales taxes arising out of the sale of Assets, and/or personal property taxes, if any, which may be owed with respect to the Assets, but such personal property taxes shall only be paid to the extent they constitute liens prior to the security interests of the Lenders or any other secured creditor, and such personal property taxes may be paid either with the Lenders' consent, or, if the Lenders do not consent, pursuant to this Court's order, after opportunity for notice and hearing.;

b. To pay a commission on the sale of the Assets to Daniels & Associates in the amount of \$225,000.00, which constitutes payment in full, when combined with the \$125,000 paid prepetition to Daniels, of any commission due on the sale of the Assets;

c. \$300,000.00 shall be set aside in the trust account of Bush Strout & Kornfeld, pursuant to the terms of this Court's Final Order Authorizing (A) Post-Petition Financing Pursuant to 11 U.S.C. § 364; (B) Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Bankruptcy Rule 4001(b); and (C) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363 entered by this Court on April 16, 1999, and all extensions and amendments thereof ("DIP Orders"), for purposes of paying employee retention amounts previously approved by this Court and contemplated by the Post-Petition Loan and Security Agreement by and among the Debtors and Coast Business Credit, a division of Southern Pacific Bank, as agent for the lenders in this case, Coast Business Credit and Goldman Sachs Credit Partners, L.P. ("Lenders") and any amendments thereto ("DIP Agreement").

13. After payment of those costs, expenses, commissions, and carve-outs set forth in paragraph 12, above, the remaining sales proceeds received from sale of the Assets, including accounts receivable collections collected by OneStar and available for remittance pursuant to the terms of the Asset Purchase Agreement and Collection Agreement and including any amount due Debtors under the Switch Usage Agreement with respect to switches owned by the Debtors, shall be defined as the Net Sales Proceeds.

14. <sup>Insert (A) KAD</sup> Notwithstanding prior orders of this Court or the terms of the Asset Purchase Agreement, the Net Sales Proceeds shall be distributed pursuant to further order of this Court prior to Closing.

///

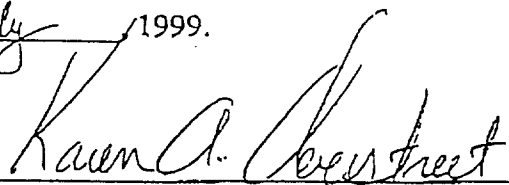
///

///

///

15. The Court shall retain sole and exclusive jurisdiction over all matters arising from or related to the Assets, the Included Agreements, the Motion, the implementation thereof and enforcement of this Order.

DATED this 14<sup>th</sup> day of July 1999.

  
HONORABLE KAREN A. OVERSTREET  
United States Bankruptcy Judge

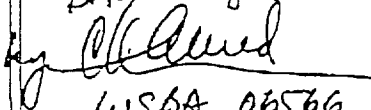
Presented by:

BUSH STROUT & KORNFIELD

By 

Armand J. Kornfeld, WSBA #17214  
Attorneys for UStel, Inc. and Arcada Communications, Inc.  
Debtors-in Possession

*Davis Wright remains*

*by *

*WSBA 06566  
Attorney for Goldman Sachs Credit Partners,  
L.P., Goldman Sachs Group, Inc., and  
Coast Business Credit*

CONTINUED:

Insert (A)

WMO alk CMO

THE NET PROCEEDS SHALL BE DISTRIBUTED, AT CLOSING, TO COAST BUSINESS CREDIT, AS AGENT FOR LENDERS ("DIP AGENT"), IN AN AMOUNT EQUAL TO THE OUTSTANDING <sup>post-petition</sup> BALANCE PURSUANT TO THE TERMS OF THE DIP AGREEMENT ("DIP LOAN BALANCE"), WITH ANY REMAINING NET PROCEEDS TO BE DISTRIBUTED PURSUANT TO FURTHER COURT ORDER PRIOR TO CLOSING, ~~AND~~ ~~NOTWITHSTANDING~~ ~~PRIOR ORDERS~~ OF NOTWITHSTANDING THE TERMS OF THE ASSET PURCHASE AGREEMENT, SUCH DISTRIBUTION OF NET PROCEEDS SHALL BE SUBJECT TO DISBURGEMENT AND REMITTANCE AS FOLLOWS:

IF ANY PROVIDERS OF TELECOMMUNICATIONS SERVICES TO THE DEBTORS DURING THE PENDENCY OF THEIR CHAPTER 11 CASES ("CARRIERS") REMAIN UNPAID FOR SUCH POST-PETITION SERVICES AS OF THE CLOSING OF THE SALE TO ONE STAR, AND DEBTORS LACK SUFFICIENT FUNDS OR RECEIVABLES TO PAY SUCH AMOUNTS, LENDERS MAY BE REQUIRED BY THIS COURT (AFTER NOTICE AND HEARING) TO PAY THEIR PRO RATA SHARE (IN PROPORTION TO THE PERCENTAGE SUCH LENDER HOLDS OF THE ~~POST~~ PRE-PETITION LOAN BALANCE) OF SUCH AMOUNTS UP TO \$250,000, IN LIEU OF THE SET ASIDE OF THE

CONTINUED:

AMOUNT OF FUNDS AS A MAKE-OUT PURSUANT  
TO THE TERMS OF THE DIP ORDERS, AND FURTHER  
MAY BE REQUIRED TO PAY <sup>ANY WHO</sup> SUCH CLAIMS TO  
CARRIERS PURSUANT TO 11 USC § 506(c)  
TO THE EXTENT THIS COURT DETERMINES THAT  
CARRIERS POSSESS SUCH CLAIMS AGAINST  
LENDERS. ~~IN~~ IN ADDITION TO LENDERS,  
GOLDMAN SACHS GROUP, INC., BASED ON  
ITS STATEMENTS TO THIS COURT THROUGH  
COUNSEL, SHALL BE RESPONSIBLE TO PAY  
A SUCH AMOUNT THAT GOLDMAN SACHS CREDIT  
PARTNERS, LP BELONGS OBLIGATED TO ~~BE~~  
DISGORGED PURSUANT TO THIS PARAGRAPH  
TO THE EXTENT THAT GOLDMAN SACHS  
CREDIT PARTNERS FAILS TO DISGORGED SUCH AMOUNT  
ACTUALLY RECEIVED BY GOLDMAN SACHS CREDIT  
PARTNERS LP.